

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

AUSTIN & DEVON ASSOCIATES, LLC,

Plaintiff,

— against —

WINDELS, MARX, LANE & MITTENDORF,  
LLP,

Defendant.

Index No.

Date Purchased:

**SUMMONS**

To the above-named Defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is CPLR § 503 because all parties resided in New York County when the suit was commenced.

Dated: July 9, 2019

MANDEL BHANDARI LLP  
80 Pine Street, 33rd Floor  
New York, New York 10005  
(212) 269-5600

By: 

Robert Glunt

*Attorneys for Plaintiff Austin & Devon  
Associates, LLC.*

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

AUSTIN & DEVON ASSOCIATES, LLC,

Plaintiff,

— against —

WINDELS, MARX, LANE & MITTENDORF,  
LLP,

Defendant.

Index No.

Date Purchased:

**VERIFIED COMPLAINT**

Plaintiff Austin & Devon Associates, LLC ("Austin & Devon") by and through its undersigned counsel alleges as follows:

1. This action seeks to force a law firm to pay what it promised for work already performed.

2. Plaintiff Austin & Devon is a legal recruiting company based in New York. Founded in 2001, Austin & Devon assists the world's finest law firms with recruiting the top legal talent. In addition to its individual attorney recruitment practice, it has also been a driving force in law firm mergers and acquisitions, enabling its law firm clients to acquire lucrative practice groups or entire law offices in one fell swoop.

3. Defendant Windels, Marx, Lane & Mittendorf, LLP ("Windels Marx") is a law firm based in New York. In October of 2013, Austin & Devon entered into a written contract with Windels Marx to provide legal recruiting services (the "Contract"). Pursuant to that contract, Windels Marx agreed to pay Austin & Devon fees when it hired associates, partners, or attorney practice groups introduced by Austin & Devon.

4. In May of 2017, performing its services under the Contract, Austin & Devon introduced Windels Marx to Andrew Miller, then a partner at Budd Lerner, P.C. A key business generator, Miller led an entire group of attorneys practicing intellectual property law relating to the pharmaceutical industry. Austin & Devon informed Windels Marx that Miller was interested in leaving his firm and could bring the entire – highly profitable – practice group along with him. With Austin & Devon's help, Miller met with Robert Luddy, the managing partner of Windels Marx, so that they could discuss the potential move.

5. After this introduction, Windels Marx continued to have conversations with Miller and exchange financial information through the end of 2017. Windels Marx did not inform Austin & Devon that these conversations were ongoing. To the contrary, in its communications with Austin & Devon in 2017, Windels Marx quickly suggested that it had passed on Miller and was no longer interested in hiring him or his team.

6. But unbeknownst to Austin & Devon, these conversations between Miller and Windels Marx continued through the end of 2017 and periodically throughout 2018. In or about the fall of 2018, Windels Marx and Miller came to an agreement upon which Miller and his group agreed to depart Budd Lerner in early 2019. That agreement was made public in April 2019, when Miller and fourteen other attorneys started work at Windels Marx.

7. Austin & Devon repeatedly demanded that Windels Marx pay the placement fee set forth in the Contract. Windels Marx refuses to pay the fee. Austin & Devon did everything it promised to do – it introduced Windels Marx to a group of talented attorneys that the firm liked enough to hire. But despite reaping the rewards of Austin & Devon's work, Windels Marx will not honor its promises.

8. As such, Austin & Devon has no choice but to bring suit against Windels Marx to vindicate its rights and to collect what it was explicitly promised.

### **PARTIES**

9. Plaintiff Austin & Devon Associates, LLC ("Austin & Devon") is a limited liability corporation organized under the laws of New York with its principal place of business in New York, New York.

10. Defendant Windels, Marx, Lane & Mittendorf, LLP ("Windels Marx") is a limited liability partnership organized under the laws of New York with its principal place of business in New York, New York.

### **JURISDICTION AND VENUE**

11. The Court has jurisdiction over this action pursuant to CPLR § 301. Defendant resides within the state of New York and is properly subject to general *in personam* jurisdiction for suits commenced within the state of New York. Jurisdiction is also proper pursuant to CPLR § 302, as this dispute concerns business transacted in the state of New York.

12. Venue is proper in this Court pursuant to CPLR § 503 because all parties resided in New York County when the suit was commenced.

### **FACTUAL ALLEGATIONS**

#### **Background**

13. Austin & Devon is a legal recruiting company based in New York. It is principally operated by its founder, Kim Valentini.

14. Ms. Valentini has over thirty years of experience in the recruiting and staffing industry. Before founding Austin & Devon, she built and operated numerous prior placement companies, including CPR New York, CPR Chicago, Chanel Staffing, JC Staffing, Job

Connection, Imperial Staffing, and Rapid Referrals. These businesses did both temporary and permanent staffing for a variety of industries, including legal, media, entertainment, finance, pharmaceutical, and retail. Under Ms. Valentini's leadership, these businesses employed thousands of individuals and arranged hundreds of thousands of job placements.

15. In the late 1990s, Ms. Valentini sold her existing recruiting businesses to larger public companies. She now focuses her attention exclusively on the legal recruiting market. At Austin & Devon, she works primarily with large AMLAW 100 law firms looking for experienced attorney talent at the partner level. She has made countless successful placements at the partner level and has been instrumental in multiple law firm mergers/acquisitions and practice group transitions between law firms.

16. To properly serve her clients, Ms. Valentini maintains contacts at hundreds of law firms throughout the United States and abroad and keeps abreast of market trends throughout all sectors of the legal industry. For instance, she is frequently called upon by large firms who wish to rapidly expand into new geographic markets, including Europe and Asia, either by hiring talented local lawyers or acquiring existing law firms for rebranding. Because of this, her detailed knowledge of numerous legal markets – and the key players within them – is a major asset.

17. Like many executive recruiting companies, Austin & Devon is compensated by placement fees paid by firms who hire attorneys or attorney groups that it identifies. Because of this, Austin & Devon does not receive compensation when attorneys are not hired and performs large amounts of uncompensated work, identifying potential hires or acquisitions that ultimately do not come to fruition.

18. Windels Marx is a law firm based in New York, with offices in Connecticut and New Jersey.

### **The Contract**

19. On October 23, 2013, Austin & Devon and Windels Marx entered into a Placement Agreement (the “Contract”).

20. The Contract was drafted entirely by Windels Marx and was presented to Austin & Devon for signature without opportunity for revision or negotiation.

21. Pursuant to the Contract, Austin & Devon agreed “to conduct a search or searches on behalf of the Firm for attorneys” with “the credentials and experience requested by the Firm.”

22. The Contract further provided for placement fees to be paid in connection with attorneys identified by Austin & Devon that were ultimately hired by Windels Marx.

23. The conditions under which placement fees would be paid and the amount of those fees varied depending on whether the attorney identified was an associate, a partner, or a member of a larger practice group hired by Windels Marx.

24. For individual associate attorney placements, Windels Marx promised to pay a placement fee of “twenty-five percent (25%) of the projected first year base salary compensation to be paid to the Attorney, exclusive of year-end bonus, benefits or other compensation.” This fee was only owed if the individual associate attorney was hired within twelve months of the referral, unless negotiations were ongoing.

25. For individual partner (or member, shareholder or counsel) placements, Windels Marx also promised to pay a placement fee of “twenty-five percent (25%) of the projected first year base salary compensation to be paid to the Attorney, exclusive of any year-end bonus, benefits or other compensation.” However, reflecting the often-protracted nature of partner level

recruiting, the Contract did not require that such placements take place within 12 months of the referral.

26. For placements of multiple attorneys at the same time, the fee promised by Windels Marx was discounted. Windels Marx agreed to pay “Twenty-five percent (25%) of the projected first year base salary compensation exclusive of year-end bonus, benefits or other compensation for the most highly compensated attorney in the group; Twenty percent (20%) of the projected first year base salary compensation exclusive of year-end bonus, benefits or other compensation for the second most highly compensated attorney in the same group; Fifteen percent (15%) of the projected first year base salary compensation exclusive of year-end bonus, benefits or other compensation for the third most highly compensated attorney in the same group; and Ten percent (10%) of the projected first year base salary compensation exclusive of year-end bonus, benefits or other compensation for all other attorneys in the same group.”

27. Again, reflecting the heavily-negotiated and often-protracted nature of practice group recruiting or law firm mergers, the Contract did not require that group placements take place within 12 months of a referral.

28. The Contract further promised that any placement fees would be paid in three installments commencing within 30 days of hiring.

#### **Austin & Devon Introduces Windels Marx to Andrew Miller and his Group**

29. Pursuant to the Contract, Robert Luddy, the managing partner of Windels Marx, provided Valentini with a list of open requirements for the firm – locations and practices where Windels Marx was looking for legal talent or potential mergers / acquisitions.

30. One of those open requirements concerned New Jersey. Luddy specifically asked Valentini to look for a practice in New Jersey that Windels Marx could either poach or acquire.

He also mentioned a desire to recruit experienced intellectual property attorneys with portable business.

31. On May 22, 2017, Kim Valentini emailed Luddy. In her email, she told him that, in response to his request, she had identified a potential firm in New Jersey located close to Windels Marx's existing Madison office. She told him that the practice groups were a good fit to Windels Marx's stated needs and that there was a good chance that the firm could be acquired.

32. Luddy was very interested. The next day, on May 23, 2017, Valentini revealed that the name of the potential firm was Budd Larner P.C. ("Budd Larner") and that the individual who was interested in making a deal was Andrew Miller.

33. Valentini was very familiar with Miller. She had been working with Miller for several years and had arranged potential interviews for Miller at other firms. She was well-acquainted with Miller's intellectual property practice, his existing pharmaceutical clients, and his desire to transition his business to a new firm.

34. While Valentini's original email had discussed an acquisition of the entire firm, she also informed Luddy that Miller was personally interested in leaving Budd Larner along with the intellectual property practice group that he ran.

35. Prior to that call, Luddy was unaware of Andrew Miller or his desire to leave Budd Larner.

36. The same day, after speaking further with Luddy, Valentini contacted Miller to obtain updated specific information about revenue and other financial details that Windels Marx needed to more carefully consider a potential merger / acquisition.

37. Miller provided this information to Valentini and she promptly passed it along to Luddy. After receiving this information, Luddy asked Valentini to arrange a meeting between him and Miller.

38. On May 25, 2017, Valentini contacted Miller to set up that meeting, which took place on June 5, 2019. Over the next week, Valentini liaised between the parties, providing Luddy with further information about Miller's practice group and his desire to bring that group with him should Windels Marx seek to hire him away from Budd Lerner. She also assisted in arranging the logistical details surrounding the lunch meeting.

39. In the weeks following that meeting, Valentini sent numerous emails to Luddy asking whether Windels Marx was still interested in Miller or his group. After failing to answer some of the messages, Luddy responded on June 28, 2017 stating "Sit tight. I don't want to make the next move."

40. Valentini followed this instruction. A month later, on July 21, 2017, she emailed Luddy again, asking "Anything new with Andrew [Miller] or is it dead?" She did not receive a response to her message.

41. Valentini believed – based on Luddy's prior communications – that discussions between Miller and Luddy had ceased.

42. But the negotiations had not ceased. On December 21, 2017, Valentini contacted Miller to see if he was interested in taking his group to a different firm – that is, not Windels Marx. Miller informed Valentini that he was still considering Windels Marx and had been given additional financial information by the firm. Indeed, Miller told Valentini that she had happened to call while he had the financial information in front of him for review.

43. Surprised, Valentini emailed Luddy the same day and mentioned the conversation with Miller. Luddy did not respond to the message. Indeed, Luddy went “radio silent” concerning his continued discussions and negotiations with Miller.

44. These discussions between Miller and Luddy continued in 2018. While the full extent of these negotiations is not yet known, they included, *inter alia*, additional email correspondence exchanged in May of 2018 and at least one in person meeting later that summer.

45. In the fall of 2018, the discussions between Miller and Windels Marx became more concrete. On information and belief, Windels Marx and Miller reached an agreement in the fall of 2018 by which Miller and his group would leave Budd Lerner in the spring of 2019 and come, *en mass* to Windels Marx.

46. On April 12, 2019, Windels Marx announced that it had hired Miller and his group. In a press release, the firm stated that 19 individuals would be joining the firm, including Miller and six other new partners. The press release is attached as Exhibit A.

47. Of the 19 individuals, at least 15 were lawyers, each of which started work on April 15, 2019.

48. According to the press release, the lawyers included Andrew Miller, Constance S. Huttner, Ajay Kayal, Alan Pollack, Frank Rodriguez, Stuart Sender, and Louis Weinstein.

49. Windels Marx immediately began touting the accomplishments of this new group. Within weeks, it began publishing press releases about the group’s accomplishments on behalf of pharmaceutical clients. The relevant press releases are attached as Exhibit B.

### **Windels Marx Refuses to Pay**

50. On April 15, 2019, Valentini contacted Luddy concerning another potential acquisition target. Luddy had previously asked Valentini to identify law firms in a particular

region that might be willing to join Windels Marx. Valentini contacted him because she had found a firm that might fit the bill.

51. While speaking with Valentini, Luddy told her that Windels Marx had just hired Miller and his group. He told her that he felt “terrible” about the whole thing and that he didn’t want her to find out about it from the legal press.

52. Once she learned about the hiring, Valentini contacted legal counsel, who promptly demanded that Windels Marx pay Austin & Devon the placement fee that was owed.

53. Pursuant to the Contract, the first installment of the fee was due on May 15, 2019.

54. Windels Marx refused to pay the money due on May 15 and to date has made no payments whatsoever.

55. With no other options, Austin & Devon now brings this action to hold Windels Marx to its promises and recover the money owed under the Contract.

### **CAUSES OF ACTION**

#### **COUNT ONE** **BREACH OF CONTRACT**

56. Plaintiff re-alleges and incorporates by reference each and every allegation in each and every preceding paragraph as if fully set forth herein.

57. On October 23, 2013, Plaintiff entered a valid and binding contract with Defendant.

58. Pursuant to this contract Plaintiff agreed to “conduct a search or searches on behalf of the Firm for attorneys” with “the credentials and experience requested by the Firm.”

59. In return Defendant agree to pay Plaintiff certain fees should it hire attorneys referred by Plaintiff.

60. Plaintiff fulfilled its obligations under the contract.

61. Defendant hired at least fifteen lawyers referred by Plaintiff.
62. Plaintiff demanded that Defendant pay the fees set forth in the contract.
63. Defendant breached its obligations under the contract by failing to pay fees that are owed.
64. Defendant's breaches are material.
65. Defendant's breaches are willful, wanton, and intentional.
66. Defendant's breaches have caused damage to Plaintiff.
67. Accordingly, the Court should award damages against Defendant for breach of contract in an amount to be proven at trial.

**COUNT TWO**  
**BREACH OF CONTRACT**  
**(IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)**

68. Plaintiff re-alleges and incorporates by reference each and every allegation in each and every preceding paragraph as if fully set forth herein.
69. Under New York law, all contracts imply a covenant of good faith and fair dealing in the course of performance. This covenant embraces a pledge that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. The duties of good faith and fair dealing imply obligations which encompass any promises which a reasonable person in the position of promise would be justified in understanding were included.
70. On October 23, 2013, Plaintiff entered a valid and binding contract with Defendant.
71. Defendant owed Plaintiff a duty to act in good faith and conduct fair dealing.

72. Defendant failed to exercise good faith and fair dealing in fulfilling the terms and promises of the October 23, 2013 contract.

73. Defendant's breaches are material.

74. Defendant's breaches are willful, wanton, and intentional.

75. Defendant's breaches have caused damage to Plaintiff.

76. Accordingly, the Court should award damages against Defendant for breach of contract in an amount to be proven at trial.

### **COUNT THREE** **UNJUST ENRICHMENT**

77. Plaintiff re-alleges and incorporates by reference each and every allegation in each and every preceding paragraph as if fully set forth herein.

78. Plaintiff performed work for Defendant, including identifying a valuable attorney practice group that Defendant could hire, introducing Defendant to the relevant decision-maker within that practice group, furnishing Defendant with relevant information necessary for Defendant to make an informed decision concerning whether to hire that practice group, and coordinating communications between Defendant and the relevant decision-maker.

79. Defendant was enriched by the work performed by Plaintiff.

80. Defendant was enriched at the expense of Plaintiff.

81. It is against equity and good conscience to allow Defendant to retain the value of the work performed by Plaintiff.

82. Plaintiff has suffered damages as a result of Defendants' conduct.

83. Accordingly, the Court should award damages against Defendants for unjust enrichment in an amount to be proven at trial.

**COUNT FOUR**  
**QUANTUM MERUIT**

84. Plaintiff re-alleges and incorporates by reference each and every allegation in each and every preceding paragraph as if fully set forth herein.

85. Plaintiff performed work for Defendant, including identifying a valuable attorney practice group that Defendant could hire, introducing Defendant to the relevant decision-maker within that practice group, furnishing Defendant with relevant information necessary for Defendant to make an informed decision concerning whether to hire that practice group, and coordinating communications between Defendant and the relevant decision-maker.

86. Plaintiff performed these services in good faith.

87. Defendant accepted these services from Plaintiff.

88. Plaintiff had a reasonable expectation of compensation for the services that it provided.

89. Plaintiff has suffered damages as a result of Defendant's conduct.

90. Accordingly, the Court should award damages against Defendant for quantum meruit in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE the Plaintiff prays that this Court:

A. Award nominal, compensatory, and punitive damages in an amount to be determined at trial but believed to be not less than \$3,000,000;

B. Award litigation costs and expenses to Plaintiff, including, but not limited to, reasonable attorneys' fees;

C. Award any additional and further relief as this Court may deem just and proper.

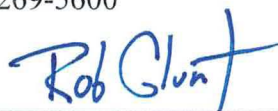
NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 07/09/2019

**DATED:** New York, New York  
July 9, 2019

MANDEL BHANDARI LLP  
80 Pine Street, 33rd Floor  
New York, New York 10005  
(212) 269-5600

By:



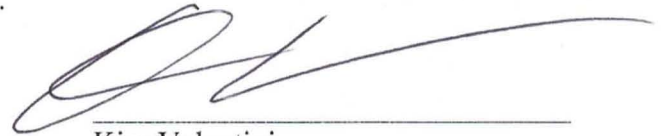
Robert Glunt

*Attorneys for Plaintiff Austin & Devon Associates,  
LLC.*

**VERIFICATION**

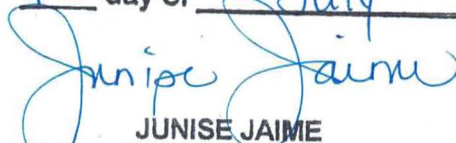
STATE OF NEW YORK     )  
                                      )  
COUNTY OF NEW YORK    )

KIM VALENTINI, states under penalty of perjury that she is the president of Plaintiff Austin & Devon Associates, LLC and that she has read the foregoing Verified Complaint and knows the contents thereof; that the same is true to the knowledge of deponent based upon personal knowledge except as to those matters therein stated to be alleged upon information and belief, and as to those matters she believes to be true.

  
\_\_\_\_\_  
Kim Valentini

State of New York  
County of New York

Sworn to before me this  
9<sup>th</sup> day of July 2019



**JUNISE JAIME**

Notary Public, State of New York  
No. 04JA6325007

Qualified in New York County  
Commission Expires May 18, 2023

# Exhibit A



**Source:** Windels Marx

April 15, 2019 09:00 ET

## Windels Marx Announces Significant Expansion of New Jersey Practice with the Arrival of a Prominent Intellectual Property Group

### Andrew J. Miller is joined by 6 Partners, 8 Associates and 4 Legal Professionals

MADISON, N.J., April 15, 2019 (GLOBE NEWSWIRE) -- Effective April 15, [Windels Marx](#) is pleased to announce the arrival of Andrew J. Miller as Partner, together with an Intellectual Property Practice Group that totals 19 lawyers and professionals. Previously in the Short Hills office of Budd Lerner PC, Andy's practice group is resident in the Madison, NJ office of Windels Marx. His group includes fellow Partners Constance S. Huttner, Ajay Kayal, Alan Pollack, Frank D. Rodriguez, Stuart Sender and Louis H. Weinstein – many of whom have been practicing together for nearly two decades and have developed a significant Hatch-Waxman practice with an international clientele.

Managing Partner of Windels Marx, [Robert J. Luddy](#), said, "We're thrilled to so significantly expand our practice mix with the arrival of Andy and his deep bench of intellectual property attorneys. It compliments well our core strengths in New Jersey including: real estate, banking and financial services, complex insurance matters and health care."

[Samuel G. Destito](#), Managing Partner of the Madison office added, "Together with New York, New Jersey has long been a primary focus of our Firm's growth. With this expansion in Madison, coupled with our substantial presence in New Brunswick, Windels Marx is now even better able to serve the market with more than 70 lawyers licensed in the state, and we continue to assess additional expansion opportunities."

Andy Miller said, "Windels Marx provides a great platform for our existing clients and an exciting opportunity to service new clients. I am also excited about the opportunity to buildout a full service intellectual property practice, as well as help with the ongoing expansion of the Madison office."

#### About Andrew J. Miller

Andrew Miller counsels on matters pertaining to litigation and complex corporate business arrangements, most often in the pharmaceutical industry. He served as General Counsel for a generic pharmaceutical company and has a deep understanding of the legal issues in that industry. Mr. Miller also served as an Assistant United States Attorney litigating disputes for federal agencies, including the FDA. He has litigated numerous Hatch-Waxman (ANDA) cases as well as a variety of other matters in the pharmaceutical industry ranging from complex business torts to trademark, trade secret and contract actions. He also frequently represents pharmaceutical companies in corporate transactions ranging from supply agreements to complex licensing and joint venture arrangements. He is a former Assistant United States Attorney for the District of New Jersey. He holds a B.A. from the University of Buffalo (1977, summa cum laude) and a J.D. from the University of Michigan Law School (1980) where he also served as Editor for the Michigan Journal of Law Reform.

#### About Constance S. Huttner

Connie Huttner is a trial lawyer whose current practice focuses on trials and appeals involving Abbreviated New Drug Applications. Ms. Huttner has also handled patent cases in other technology areas, including medical devices, computer software and hardware, business methods, wind turbines,

cosmetics, electronic devices, coatings and other chemical products and pumps and other mechanical devices. She has also litigated cases involving false advertising, trademark, patent licensing and trade secret matters. Ms. Huttner has also provided non-litigation patent opinions and counseling in connection with mergers and acquisitions and other corporate transactions. Prior to focusing her practice on intellectual property matters, Ms. Huttner litigated cases arising out of contests for corporate control, including hostile takeovers, proxy contests, and shareholder litigation. She has also litigated contract, insurance and other commercial disputes as well as contested bankruptcy matters. Ms. Huttner received a B.S. in Cellular Immunology from Ohio State University with Honors in the Liberal Arts (1977, Phi Beta Kappa), and a J.D. from Boston College Law School (1980, magna cum laude). While at Boston College Law School, Ms. Huttner was a member of the Order of the Coif and Boston College Law Review. Ms. Huttner was previously a partner at Skadden, Arps, Slate Meagher & Flom and Vinson and Elkins.

### About Ajay Kayal

Ajay Kayal focuses on opinion drafting, patent litigation, and strategic client counseling in patent cases arising under the Hatch-Waxman Act. He has extensive experience in the preparation of invalidity, non-infringement, and freedom to operate opinions and notice letters in connection with Abbreviated New Drug Application (ANDA) filings by generic pharmaceutical clients. He routinely counsels generic pharmaceutical clients on a variety of issues, including product selection, strategy for ANDA and 505(b)(2) NDA filings, risk assessments, and designing around process, polymorph, and formulation patents. He also collaborates with litigation teams to develop strategy and works with experts in litigation. Ajay worked as a Technical Advisor prior to and during law school. He holds a Ph.D. in Chemistry from Princeton University (2002) and a J.D. from Rutgers University School of Law - Newark (2009).

### About Alan Pollack

Alan Pollack has litigated patent and other intellectual property disputes from inception through trial and subsequent appeal. His areas of practice include numerous electronic and electrical matters, but have also spanned a wide range of technologies including patents for making pizza to patents on brain surgery devices. Mr. Pollack has also focused on analysis of cryptographic systems employed in varying patent contexts including cable television delivery systems, smart cards, and digital radio broadcasting systems. He currently concentrates on patent infringement litigation of pharmaceutical patents in ANDA cases. Mr. Pollack has also worked extensively for several semiconductor chip manufacturers in connection with patent and copyright litigation. The technologies involved in these semiconductor cases include DSP chip architecture, CODECs,  $\Delta\Sigma$  Modulation, Sense Amplifier circuitry, modulo addressing schemes, and the manufacture of refractory metal silicide semiconductor devices. Mr. Pollack has litigated patents concerning video games, CRT touch screens, ultrasound devices, balloon angioplasty/brachytherapy equipment and procedures, hip prostheses, orthodontal brackets, steam turbines, and pumps for toxic chemicals. In addition of patent litigation, Mr. Pollack has also litigated trademark, trade secret and copyright disputes. Mr. Pollack has also counseled clients concerning patent issues in connection with IPOs and corporate purchase decisions. He has written several opinions of non-infringement and prosecuted patent matters. Mr. Pollack's experience also includes arbitration and mediation. He has also lectured for several years concerning service marks. Before coming to intellectual property law, Mr. Pollack practiced general litigation for three years, and focused on product liability defense of manufacturers of automobiles, motorcycles, jet skis, ATVs and other vehicles. In addition, Mr. Pollack litigated a complex "engineering malpractice" matter concerning nuclear power plant construction. He has written software, in connection with patent analysis and otherwise. He holds a B.S.Ch.E. from the University of Pennsylvania (1983), a J.D. from Hofstra University School of Law (1986) where he was an Associate Editor of the Hofstra Labor Law Journal, and a B.S.E.E. from Columbia University School of Engineering and Applied Science (1992).

### About Frank D. Rodriguez

Frank D. Rodriguez is a partner in the firm, specializing in complex litigation matters and intellectual property. For nearly two decades he has concentrated his practice in the representation and counseling of pharmaceutical industry clients, focusing on litigating patent cases arising under the Drug Price Competition and Patent Term Restoration Act (Hatch-Waxman cases). He is a leading expert in brand-generic settlement agreements and licensing agreements, and the negotiation, mediation, and drafting of those agreements and related agreements. With a broad spectrum of legal, technical and industry knowledge, together with substantial experience in patent, regulatory, and litigation matters, he regularly counsels clients with respect to business and legal strategies involving intellectual property rights, as well as preparation of freedom-to-operate and other patent opinions, and conducting due diligence studies. A former development scientist for both branded and generic pharmaceutical companies prior to his legal career, Mr. Rodriguez frequently advises clients on product development and preparing patent strategies

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 07/09/2019

in order to successfully navigate potential competitors' intellectual property. He has provided strategic legal counsel on numerous matters involving patents, abbreviated new drug applications (ANDAs), section 505(b)(2) applications, and FDA regulatory and marketing exclusivity issues. He also assists clients in connection with FDA patent certification and patent notification requirements, labeling and other issues relating to the FDA approval process. Some of his successes include obtaining a decision of noninfringement in a pharmaceutical patent case immediately upon the conclusion of trial, as well as obtaining dozens of favorable early-entry settlements for his clients. He holds a B.S. from Rutgers College of Engineering (1989) and a J.D. from the University of Dayton School of Law (1994) and is admitted to practice in New York, New Jersey, Washington, DC and the United States Patent and Trademark Office.

**About Stuart D. Sender**

Stuart Sender has experience in a broad range of intellectual property litigation and licensing matters. His practice includes litigating patent and trademark infringement suits and counseling on intellectual property matters such as: representing plaintiffs or defendants in patent infringement suits in the pharmaceutical, chemical, electrical and mechanical arts; advising pharmaceutical companies on strategies concerning ANDA filings; licensing technology, software and other intellectual properties in the computer, communications, semiconductor, industrial chemical, pharmaceutical, medical device, video game, electrical equipment, manufacturing, advertising and fashion industries, confidentiality and noncompetition agreements; and evaluating intellectual property in the context of mergers and acquisitions. Mr. Sender is a frequent speaker on intellectual property litigation and licensing issues. He teaches Patent Law as an adjunct faculty member at Rutgers Law School and has taught Patent Litigation in the past. He has a J.D. from New York University School of Law and a B.S.E. from Princeton University.

**About Louis H. Weinstein**

Louis Weinstein is a registered patent attorney with a diverse background and extensive experience as lead counsel in Hatch-Waxman litigations. He has been responsible for all aspects of litigation in numerous generic challenges to innovator drugs, including: Plavix, Lamisil, Avelox, Prozac 90, Lotrel, Namenda, Prilosec OTC, Amitiza, Fetzima and Otezla. His client counseling duties include the drafting and supervision of opinions on patents covering compositions of matter, pharmaceutical formulations, methods of treatment and industrial processes. Mr. Weinstein's experience also includes inter partes review before the Patent Office, as well as the handling of environmental and mass tort litigations, and overseeing environmental remediations. He holds a B.A. in Chemistry and Mathematics from Amherst College (1979), M.S. degrees in Industrial Administration and Chemical Engineering from Carnegie-Mellon University (1983), a Certificate in Accounting from the University of Pittsburgh (1989), and a J.D. from the University of Chicago (1990).

**About Windels Marx.** With offices in New York, New Jersey and Connecticut, Windels Marx Lane & Mittendorf, LLP is a full-service law firm formed in the mid-nineteenth century. Today, Windels represents domestic and international clients in banking and finance, energy and environment, government and tobacco interests, healthcare, hospitality, insurance, manufacturing, real estate, technology and intellectual property and transportation. Learn more at [www.windelsmarx.com](http://www.windelsmarx.com).

**For more information, please contact:**

Heather Pearson  
Matter Communications  
O: (978) 518-4828  
[windelsmarx@matternow.com](mailto:windelsmarx@matternow.com)

# Exhibit B



GET UPDATES

SEARCH

[LAWYERS](#) | [OUR FIRM](#) | [PRACTICES](#) | [NEWS](#) | [CAREERS](#) | [CONTACT US](#)

## NEWS

## News &amp; Noteworthy

+ SHARE

Case Win - Windels Marx IP - Hatch-Waxman Team Wins a Motion For Judgment on the Pleadings for Slayback in Liquid Bendamustine (BELRAPZO®)

MAY 10, 2019

On Thursday, May 9, a Windels Marx IP - Hatch-Waxman Act team achieved an important victory on behalf of firm client Slayback Pharma LLC ("Slayback") against Eagle Pharmaceuticals, Inc. ("Eagle"), winning a [motion for judgment](#) on the pleadings on all four asserted patents.

The case arose when Slayback filed a New Drug Application ("NDA") seeking regulatory approval to market a generic version of Eagle's liquid bendamustine product, brand name BELRAPZO®. Eagle filed a patent suit in the U.S. District Court for the District of Delaware against Slayback, alleging that Slayback's NDA product infringed four of its patents.

After Eagle answered Slayback's counterclaims, Slayback immediately filed a motion for judgment on the pleadings before any fact discovery in the case had taken place, arguing that Eagle was legally barred from asserting that Slayback's formulation infringed under the doctrine of equivalents, based on the disclosure dedication rule. Under the disclosure-dedication rule, a patentee can disclaim an equivalent by disclosing the equivalent in the written description of the patents, but not claiming it. Slayback explained that a component of its formulation was disclosed in Eagle's four patents, but not claimed, and thus Slayback could not infringe any of the four asserted patents under the doctrine of equivalents.

Eagle made two arguments against applying the disclosure-dedication doctrine. First, it contended that the Federal Circuit's decision in *Nalco Co. v. Chem-Mod, LLC*, 883 F.3d 1337 (Fed. Cir. 2018) prohibited application of the disclosure-dedication doctrine at the pleadings stage. Second, Eagle argued that it would be inappropriate to grant Slayback's motion at this time because Slayback had not shown that a person of ordinary skill in the art (a POSITA) would understand the patents' written description to teach the use of the alternative Slayback used in its formulation.

The Court rejected Eagle's arguments. With respect to Eagle's first argument, the Court explained that "[f]irst, *Nalco* did not address the disclosure-dedication doctrine. Second, contrary to Eagle's assertion, *Nalco* did not hold that all 'questions over the proper interpretation of a patent's intrinsic record are 'not suitable' and 'particularly inappropriate' for resolution on a motion to dismiss.'" In dismissing Eagle's second argument, and refusing to even consider the expert declaration Eagle submitted, the Court explained that "Eagle's attempt to confine the disclosure-dedication doctrine to cases where an alleged infringer's exact formulation is disclosed in the written description, however, is contrary to established Federal Circuit precedent."

Accordingly, the Court granted Slayback's motion as to all four patents and closed the case.

[Andrew Miller](#), [Constance Huttner](#), [Ajay Kayal](#), [James Barabas](#) and [Beth Finkelstein](#) represented Slayback.

Read the [Motion for Judgment](#).

Learn more about our [Intellectual Property - Hatch-Waxman Act Practice Group](#).

+ SHARE

Windels Marx helps you harness opportunity and mitigate risk with a team that provides your business with the service, quality and value essential to a trusted relationship.

[READ MORE](#)

AT-A-GLANCE

SEARCH LAWYERS

BROWSE PRACTICE AREAS

## NEWS &amp; NOTEWORTHY

[Article - Chris Dean Quoted in Two Crain's NY Business Articles on Opportunity Zones](#)

[Case Win - Windels Marx IP - Hatch-Waxman Team Wins Appeal for Dr. Reddy's Laboratories in esomeprazole/naproxen \(Vimovo®\)](#)

[Case Win - Windels Marx IP - Hatch-Waxman Team Wins a Motion For Judgment on the Pleadings for Slayback in Liquid Bendamustine \(BELRAPZO®\)](#)

[HOME](#) | [LAWYERS](#) | [OUR FIRM](#) | [PRACTICES](#) | [NEWS](#) | [CAREERS](#) | [CONTACT US](#) | [SITEMAP](#) | [LEGAL AND PRIVACY NOTICES](#) | [RSS](#)



GET UPDATES

SEARCH

[LAWYERS](#) | [OUR FIRM](#) | [PRACTICES](#) | [NEWS](#) | [CAREERS](#) | [CONTACT US](#)

## NEWS

## News &amp; Noteworthy

+ SHARE

Case Win - Windels Marx IP - Hatch-Waxman Team Wins Appeal for Dr. Reddy's Laboratories in esomeprazole/naproxen (Vimovo®)

MAY 15, 2019

On Wednesday, May 15, a Windels Marx IP - Hatch-Waxman Act team achieved a significant victory on behalf of firm client Dr. Reddy's Laboratories ("DRL") against Horizon Medicines and Nuvo Pharmaceuticals (collectively "Nuvo"), winning a reversal and findings of invalidity before the Federal Circuit.

The case arose when DRL filed an Abbreviated New Drug Application ("ANDA") seeking regulatory approval to market a generic version of Nuvo's esomeprazole/naproxen product, brand name Vimovo®. Nuvo sued DRL in the District of New Jersey alleging that DRL's ANDA products infringed its patents directed to pharmaceutical compositions with an uncoated proton-pump inhibitor ("PPI") and an enteric coated non-steroidal anti-inflammatory drug ("NSAID"). DRL alleged that the asserted patents were invalid as obvious and invalid for lack of enablement and written description. The district court had granted DRL summary judgment of non-infringement with respect to the first Nuvo patents. After a bench trial, the district court found the patents not invalid as obvious and not invalid for lack of enablement or written description.

DRL and co-defendants Mylan and Lupin appealed the district court's written description findings, and Nuvo cross-appealed the district court's grant of summary judgment of non-infringement to DRL. The Federal Circuit first found that the claims require a therapeutically effective amount of uncoated PPI, and that the evidence demonstrated that a person of ordinary skill in the art would not have expected an uncoated PPI to work. The Federal Circuit held that "[i]n light of the fact that the specification provides nothing more than the mere claim that uncoated PPI might work, even though persons of ordinary skill in the art would not have thought it would work, the specification is fatally flawed." The Court rejected Nuvo's argument that a description of how to make and use the claimed invention was sufficient for an adequate written description.

The Court thus reversed the district court's holding and declared the asserted patents invalid for lack of an adequate written description. The Court dismissed Nuvo's cross-appeal (seeking to reverse the district court's summary judgment of non-infringement as to DRL's ANDA) as moot.

Alan Pollack, Andrew Miller and Stuart Sender represented DRL.

Read the [Federal Circuit's Opinion](#).

+ SHARE

Windels Marx helps you harness opportunity and mitigate risk with a team that provides your business with the service, quality and value essential to a trusted relationship.

[READ MORE](#)

AT-A-GLANCE

SEARCH LAWYERS

BROWSE PRACTICE AREAS

## NEWS &amp; NOTEWORTHY

[Article - Chris Dean Quoted in Two Crain's NY Business Articles on Opportunity Zones](#)

[Case Win - Windels Marx IP - Hatch-Waxman Team Wins Appeal for Dr. Reddy's Laboratories in esomeprazole/naproxen \(Vimovo®\)](#)

[Case Win - Windels Marx IP - Hatch-Waxman Team Wins a Motion For Judgment on the Pleadings for Slayback in Liquid Bendamustine \(BELRAPZO®\)](#)

[HOME](#) | [LAWYERS](#) | [OUR FIRM](#) | [PRACTICES](#) | [NEWS](#) | [CAREERS](#) | [CONTACT US](#) | [SITEMAP](#) | [LEGAL AND PRIVACY NOTICES](#) | [RSS](#)